KENTUCKY DEPARTMENT OF EDUCATION

STAFF NOTE

Action/Discussion Item:

Anderson County School District's request for waiver of 702 KAR 4:170, Part 2.a.11

Applicable Statute or Regulation:

702 KAR 4:050, Building Sites; Inspection, Approvals
702 KAR 4:170, Facility Programming and Construction Criteria
KRS 156.160(2)(a), Waiver procedure for Kentucky Board of Education (KBE) regulations

Action Question:

Should the Kentucky Board of Education (KBE) approve the Anderson County Board of Education's request to waive the requirement for a 200-foot building setback from a high-pressure gas line?

History/Background:

Existing Policy. 702 KAR 4:050 states, " The property shall not have easements traversing the site. Easements are allowable along perimeter. Commitments to relocate easement from traversing site to perimeter shall be considered." 702 KAR 4:170, Part 2.a.11 requires districts to "Locate school facilities at least two hundred (200) feet away from any source of air or water contamination and high-pressure gas lines."

KRS 156.160, Section 2(a) gives the KBE authority to approve a request for regulatory waiver "when the school district or school has demonstrated circumstances that may include but are not limited to the following: 1. An alternative approach will achieve the same result required by the administrative regulation; 2. Implementation of the administrative regulation will cause a hardship on the school district or school or jeopardize the continuation or development of programs; or 3. There is a finding of good cause for the waiver." KRS 156.160, Section (2)(b) states that administrative regulations relating to health and safety shall not be subject to waiver.

In December 2003, the Anderson County Superintendent was aware of the 200-foot setback requirement and advised us "…the property is big enough for us to plan around the gas line. It can be worked out so the gas line is on the edge of the location where we place our new schools."

A February 18, 2004 letter to the Superintendent reminded him of the 200-foot setback requirement and recommended the relocation of the gas line to the perimeter of the property.

The Superintendent since retired. The issue became known to the new Superintendent after construction of the new elementary school on the site was well under way. The new building is approximately 68 feet from an existing 6-inch diameter natural gas distribution line operating at a maximum allowable pressure of 175 psig.

The Code of Federal Regulations defines high-pressure distribution to mean any pipeline where pressure in the main is higher than the delivery pressure to the customer, and normal delivery pressure to customers is about 2 psig. Jason Brangers, Public Service Commission engineer, advised KDE that he knows of no other state or federal regulation requiring a setback distance from high-pressure gas lines.

Policy Issues and Options:

The Board has the following options regarding this site acquisition request:

1. Approve a waiver of the setback distance, provided the regulation requirement does not relate to health and safety.
2. Delay action and request additional information.
3. Deny the waiver request.

Staff Recommendation and Rationale:

Staff cannot recommend approval of the waiver because in our opinion this is a safety issue, and we are not qualified to say it is harmless to locate the school less than 200 feet from the high pressure gas line.

Impact on Getting to Proficiency:

Safe school facilities are a necessary component for academic success; a school's physical environment has an impact on student achievement, and the health and welfare of students, teachers and staff.

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Deputy Commissioner **Interim Commissioner of Education**

Date:

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